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Administration of justice at the United Nations

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Report of the Internal Justice Council

I. Introduction

1. The present report is the final report of the first Internal Justice Council, its members having been appointed by the Secretary-General between March and May 2008 for a term of four years. After two short extensions by the Secretary-General, its term is to expire on 30 June 2012. The Council was established by the General Assembly in its resolution 62/228. It consists of five members: one staff representative, one management representative, two distinguished jurists — one each nominated by management and by staff — and an independent distinguished jurist nominated by the four members to be the Chair. The current members are the distinguished external jurists Sinha Basnayake (Sri Lanka, nominated by management) and Geoffrey Robertson (United Kingdom of Great Britain and Northern Ireland, nominated by staff), with Jenny Clift (Australia, International Trade Law Division, Office of Legal Affairs, staff representative) and Frank Eppert (United States of America, Department of Management, management representative). The current Chair is Kate O'Regan, whose term of office as a judge of the Constitutional Court of South Africa expired in October 2009. The Council was initially given a four-part task:

(a) To search for suitable candidates for the available judicial positions on the United Nations Appeals Tribunal and the United Nations Dispute Tribunal, interviewing candidates when necessary;

(b) To provide names and recommendations for two or three candidates for each position;

(c) To draft a code of conduct for the judiciary;

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(d) To provide views on the implementation of the administrative system of justice to the General Assembly, in accordance with General Assembly resolution 62/228.

2. During the four-year tenure of the Council, those tasks have all been carried out. The Council has conducted two recruitment exercises, the first in 2008 and the second in 2011. Advertisements were placed in the *Economist*, *Le Monde*, *Jeune Afrique*, the Asian edition of the *Wall Street Journal* and other appropriate media, and the search for candidates was also conducted through United Nations communications systems, Member State judiciaries and bar councils and other professional organizations. Some 800 candidates, who were judges with at least 10 (in the case of the Dispute Tribunal) or 15 (in the case of the Appeals Tribunal) years of experience, were considered, and some 70 of those candidates were brought to The Hague and tested by both oral and written examinations. Council members spent a week on the interview/examination process each time, as well as a great deal of time on the initial shortlisting process (for a fuller account, see A/63/489 and Add.1 and A/66/664 and Add.1).

3. A code of conduct for judges was drawn up after widespread consultation; it has been approved by the General Assembly and is now binding. It is a matter of great concern that thus far no enforcement machinery has been established — a failure commented further on later in the present report.

4. Internal Justice Council members have monitored the justice system from its beginning and have provided regular reports and recommendations to the General Assembly; the present report is the last of such reports from the first Council. In addition to the reports relating to the identification of candidates for judicial appointment, the Council has submitted two previous reports on its views on the system of the administration of justice (A/65/304 and A/66/158).[1] The present, final report is divided into seven main sections. The second section deals with the background of the system, the third with the work of the Council, the fourth with the code of conduct and the need for an enforcement mechanism, the fifth with the work of the Tribunals, the sixth with the Office of Staff Legal Assistance and the seventh with the Office of Administration of Justice. Annexed to the report are memorandums prepared by the judges of the Dispute Tribunal and the Appeals Tribunal as directed in General Assembly resolution 66/237, paragraph 45. The Council has not edited or amended the memorandums in any way. Many of the proposals made by the judges mirror those made in the present report, although not all do.

II. Background

5. For many years before the establishment of the new system, management and staff were dissatisfied with the long-standing system of administrative justice within the United Nations. That system was based on peer review panels that could make only non-binding recommendations and an administrative tribunal whose members were not required to have had judicial experience. In 2006, the Redesign Panel (see para. 6 below) described the system as "outmoded, dysfunctional, ineffective and

[1] Full list of reports submitted by the Internal Justice Council to date: A/63/489 and Add.1, A/64/791, A/65/86, A/65/304, A/65/671, A/65/853, A/66/158 and A/66/664 and Add.1.

lacking in independence". Management found it amateurish and time-consuming, while staff members who had come from jobs in countries where they had legal protection against wrongful employment decisions or behaviour found that the immunity of the United Nations from legal action in local courts, coupled with the ineptitude of the internal system, effectively denied them remedies when they were subject to such decisions. Administrative justice had progressed in many jurisdictions beyond what was provided for employees of the United Nations: the fairness and due process that international law required of Member States were not afforded to United Nations staff.

6. In 1995, the Secretary-General sought to professionalize the system, but the various stakeholders could not agree on a way forward. Eventually the General Assembly, by its resolution 59/283, established the Redesign Panel to devise a new model of internal justice that would be "independent, transparent, effective, efficient and fair". It would ensure that individuals and the Organization itself could be held accountable, so that staff at all levels and in all locations could have access to an expeditious process to resolve disputes. On 12 June 2006, the United Nations Staff Union in New York published the report of a commission of experts on reforming internal justice at the United Nations. It identified the need for a body it called the "Internal Justice Council" to select on the basis of merit and recommend judges to the General Assembly for appointment to the Tribunals, then to monitor the system both to protect judicial independence and assure judicial performance.[2] It recommended that the Internal Justice Council consider any complaints against judges.

7. The Redesign Panel recommended the establishment of an Internal Justice Council, with a five-person membership as had been recommended by the Staff Union commission of experts. The Panel did not, however, go into detail about how the Council should function, other than to state that the Council would be "responsible for monitoring the formal justice system and also for compiling a list of persons recommended for each judicial position" (see A/61/205, para. 127).

III. Role of the Internal Justice Council

8. The Internal Justice Council was tasked with promoting judicial independence and providing expert and unbiased advice to the General Assembly on the merit of judicial candidates, among other things. Although the Assembly would appoint, by way of elections, from a list submitted by the Council that contained two or three nominees for each position, all the nominees would be experienced judges who had been transparently tested in a competition and assessed by experts. It was envisaged that the Council would provide its views on the system of internal justice and draw attention to any special needs that had to be met or problems that had to be resolved. It was also envisaged that the Council would not only draft a code of conduct but would be the mechanism for enforcing it.

[2] The commission was established by the Staff Union to review the system for administering justice within the United Nations and to make recommendations for reforming that system. For the report of the commission, see www.fsu.unlb.org/docs/related_documents/Report on the administration of the justice system.pdf.

9. For the last four years, members of the Internal Justice Council have communicated weekly by e-mail and monthly by telephone and have met together regularly to discuss developments with stakeholders, identify problems and formulate views on how they should be addressed. It has conferred with the judges of the Appeals Tribunal and Dispute Tribunals often as possible and has monitored the caseload of the Tribunals, as well as other matters.

10. The role of the Internal Justice Council is to support the judiciary in its efforts to provide fair and effective justice. Towards that end, the Council, while maintaining an arms-length relationship with the judges, draws attention to defects in the procedures or working practices that they may have developed. It is not the task of the Council to involve itself in any way with the facts of cases or with the law that has been applied to them, but rather to ensure that the judges are free from any kind of pressure to decide one way or the other, in particular cases or in general. The Council is concerned, for example, that the judges have suitable status within the United Nations and have sufficient facilities to deliver justice, and be seen to be delivering justice, to all United Nations employees and managers, including those based outside the three seats of the Dispute Tribunal — New York, Geneva and Nairobi.

11. The work of the Council has been impaired by the shortage of resources. The Council strongly urges that, in future years, the needs of the Council be adequately met and included within the budgets of the Office for the Administration of Justice (see, in this regard, its previous reports, A/65/305, para. 76 and A/66/158, para. 46).

IV. Enforcing the code of conduct

12. The Internal Justice Council drafted a code of conduct for the judiciary after extensive consultation. The code has been endorsed by the General Assembly and received compliments from the International Bar Association: it is a modern statement of judicial independence and ethics. Despite the Council's regular reminders to the Secretary-General and to the General Assembly, however, no enforcement mechanism has been established; those who feel aggrieved by possible breach of the code cannot presently obtain an effective process or remedy. The Council has to stress that this is a serious dereliction of duty: a code of conduct requires an effective enforcement mechanism. There have been a number of complaints that continue to remain outstanding. To provide one example, shortly after the code was drafted a member of management who regularly appeared before a particular judge as counsel complained to the Internal Justice Council that the judge seemed to have developed an animosity based on the counsel's refusal to appoint the judge's relative as an intern in the counsel's department. The complaint could readily have been investigated by the Council and resulted in either a dismissal (it was a case where a simple inquiry might have cleared the judge of any involvement in promoting a relative) or further investigation and a possible reprimand. The Council has been given no power to make any such inquiry, however, and the matter remains unresolved and unaddressed to this day. It is a wholly unsatisfactory situation.

13. In paragraph 44 of resolution 66/237, adopted at the sixty-sixth session of the General Assembly, the Secretary-General was requested to provide a report to the Assembly on the issue. As its term of office will end before that report is compiled,

the Council considers it appropriate to raise the matter again here. There have been a number of different mechanisms suggested for enforcing the code. The judges themselves believe that they should be part of the machinery. The Internal Justice Council disagrees. Justice must be seen to be done. It is increasingly recognized that it is not appropriate to have a complaint against a judge decided by that judge's colleagues. The perception might well be that colleagues would be biased in favour of the judge, although in reality they are sometimes biased against a colleague whom they dislike. In any event, the Council advises that the judges be excluded from disciplinary issues relating to other judges.

14. At present, there are two solutions under consideration. The first suggests that such disciplinary issues be decided by a special panel of three international judges. That would be expensive, administratively unwieldy and likely fraught with delay since such judges would have little understanding of the internal justice system of the United Nations. The second solution is the one proposed by the Internal Justice Council in its previous report (see A/66/158, para. 7), namely that the three external jurist members of the Council convene to determine complaints. That mechanism would provide an expeditious, effective, inexpensive and independent system. The Council proposes that the following procedure be adopted:

(a) The three external jurist members of the Council will convene separately, initially by electronic means, as the Judicial Panel for Complaints. Upon receipt of a complaint, the Panel will initially consider whether the complaint is admissible — whether there is an alleged breach of the code of conduct or any evidence has been presented showing the judge to be guilty of misbehaviour or else incapable of performing the duties of the office;

(b) If the complaint has no substance, it will be dismissed without investigation and the judge will be notified thereafter;

(c) If the complaint appears to have substance, it will be shown to the judge, who will be given an opportunity to respond in writing, and an opportunity will be provided to the complainant to comment on the judge's response;

(d) If, after this process, the Panel is satisfied that the complaint has no substance, it will issue a ruling to that effect; if it considers that a further investigation is required, it will conduct one;

(e) The investigation and any subsequent hearing in relation to the complaint will conform to a procedure that the Panel considers fair in the circumstances to the impugned judge, who will be given every opportunity to answer allegations;

(f) Having concluded these stages, the Panel may dismiss the complaint or uphold it and issue a reprimand to the judge concerned; these actions will be taken publicly;

(g) If the Panel considers that the misconduct or incapacity is proven and is sufficiently serious to warrant the dismissal of the judge, it will immediately submit a report to that effect to the General Assembly, which will decide whether to proceed to dismissal.

15. The procedure would need to be settled and incorporated into a resolution of the General Assembly. This is one reason — there are many others — for formalizing the position of the Internal Justice Council and providing it with permanent administrative support.

V. The Tribunals, including the Registries

A. United Nations Dispute Tribunal

Table 1
Activities of the United Nations Dispute Tribunal from 1 July 2009 to 30 April 2012

Cases received	961
New cases received	638
Cases transferred from the Joint Appeals Board or the Joint Disciplinary Committee[a]	169
Cases transferred from the United Nations Administrative Tribunal	143
Remanded cases[b]	11
Cases disposed of	677
New cases disposed of	376
Cases transferred from the Joint Appeals Board or the Joint Disciplinary Committee	164
Cases transferred from the United Nations Administrative Tribunal	129
Remanded cases	8
Total cases pending as at 31 December 2011	**284**

[a] The peer review bodies under the former system of justice.
[b] Remanded cases are cases sent back to the Dispute Tribunal from the Appeals Tribunal.

16. In the course of disposing of 677 cases before the Dispute Tribunal, a total of 591 judgements were handed down, 1,833 orders were made and 754 hearings were held. Of the 284 cases pending, 257 are new cases, 5 remain of those transferred from the Joint Appeals Board or the Joint Disciplinary Committee, 14 remain of those transferred from the United Nations Administrative Tribunal and 8 are remanded cases.

17. On an annual basis, the Dispute Tribunal received 160 new cases between January and December 2010, including 4 remanded cases, and 283 between January and December 2011, including 5 remanded cases. The number of cases disposed of also increased, from 237 cases in 2010 to 271 in 2011. It is too early to forecast what these figures might be for the year ending 31 December 2012.

18. There is no clearly discernible or statistical explanation for the increase in the number of new applications received. It might be explained, however, by a number of factors, including that the new system is achieving its goals of delivering impartial and quick results and, accordingly, staff are using it more often to seek redress in situations when previously they would have tolerated the frustration involved in the perceived injustice; that the new system makes even high-ranking staff accountable for their decisions and thus engenders trust in the system; that there is growing satisfaction with the treatment accorded to complaints by the Tribunals; and that there has been increased outreach by the Office of Administration of Justice, the Management Evaluation Unit in the Office of the Under-Secretary-General for Management and others on the availability of justice through recourse to the system. As such, the current caseload might be seen as an

accurate reflection of the true number of issues requiring consideration by the internal justice system and, on the positive side, the process is getting grievances out into the open, giving management an opportunity to take remedial action and alleviating the simmering discontent and low morale that arises from unresolved staff-management disputes.

19. As discussed in the report of the Internal Justice Council to the General Assembly at its sixty-sixth session, when considering these statistics, it should be noted that one "case" (i.e. one complaint about a particular course of management conduct) can give rise to multiple orders by the Tribunals, for example, an order for a suspension of action and another for the disclosure of documents, each of which may be the result of extensive legal analysis and reasoning (see A/66/158, para. 8). There may be far more judgements and orders than there are "cases". The end of a case in both Tribunals will ordinarily involve an order with a final reasoned judgement on the merits. It is quite difficult to generalize as to how much work a single case involves, as some cases may be quite simple, involving only one judgement, while others may involve numerous orders and judgements.

20. The additional capacity provided by the three ad litem judges has allowed the Dispute Tribunal to make significant progress in disposing of the backlog of cases with which it was faced at its establishment in July 2009. Nevertheless, it appears to the Internal Justice Council that the current number of pending cases represents, on the basis of the current disposal rate, approximately 12 months of work for the existing judges (six full-time judges, including three ad litem judges, and two half-time judges). Although it may be considered that the Tribunal is still in its "start-up phase", and that it is too soon to determine what the ongoing caseload and output of the Tribunal might be when that phase has passed (see A/66/7/Add.6, para. 19), it seems clear that the existing judges have barely been able to keep pace with the new caseload at the rate it is being generated and that delays are beginning to be experienced.

Undesirability of repeated extensions of the terms of ad litem judges

21. The terms of ad litem judges have been extended three times. The initial terms of one year, from July 2009 to June 2010, were extended for a further year to June 2011, again for six months to the end of December 2011 and again for one year to the end of December 2012, subject to review and a possible extension for a further year (see A/66/628, para. 42). The Internal Justice Council maintains the view that for several reasons it is not desirable to reappoint ad litem judges continually (see A/66/158, para. 10). The requirement of judicial independence is undermined by the repeated reappointment of ad litem judges, who have no security of tenure. Repeated uncertainty about the extension of the terms of office of ad litem judges makes it very difficult for them to arrange their affairs, and they may be unable to accept further extensions; it is for these reasons that the former ad litem judge in New York was unable to continue in service. When judges decline to accept belated extensions, it may be difficult for the Council to identify two or three candidates suitable for a vacancy without incurring the high cost of a recruitment exercise. It is for that reason that the ad litem position in New York has been vacant for a period of 11 months. Alessandra Greceanu, the newly appointed ad litem judge, was to arrive in New York in early June.

Need for three additional permanent judges

22. The Internal Justice Council continues to be of the view that the current number of judges needs to be maintained to handle the number of cases being filed and to avoid the build-up of the backlogs that were a feature of the old system of justice and prevented the prompt administration of justice (see A/65/304, para. 21 and A/66/158, para. 9). If there were concern that the Dispute Tribunal may thus be overstaffed, the Council notes that the General Assembly would have the option not to appoint new judges when the terms of judges expire or when judges resign. As the judges' terms are staggered, that option would be available at least every three or four years. The flexibility provided by that approach would, in the view of the Council, make it unnecessary to repeatedly renew the terms of ad litem judges to address the caseload and workflows of the Tribunal. If three additional permanent judicial posts were established, the support staffing currently provided at each registry for the ad litem judges would need to be retained permanently.

Half-time judges of the United Nations Dispute Tribunal

23. The Internal Justice Council has previously noted the impact of the caseload and workflow demands of the Dispute Tribunal on the half-time judges (see A/66/158, para. 11) and is aware that in paragraph 20 of its seventh report on the proposed programme budget for the biennium 2012-2013 (see A/66/7/Add.6), the Advisory Committee on Administrative and Budgetary Questions expressed the view that further consideration should be given to the recommendation of the Council noted below, with regard to the use of part-time judges, given that that would provide an efficient and flexible alternative arrangement.

24. The Internal Justice Council maintains the view expressed in paragraph 12 of its previous report (A/66/158) that the need for an additional half-time judge might be avoided if the statute of the Dispute Tribunal were to be amended to provide for two part-time judges budgeted at 75 per cent of the cost of a full-time judge, instead of two half-time judges budgeted at 50 per cent of the cost of a full-time judge. That change would enable the existing half-time judges to devote more than six months a year to the Dispute Tribunal. This change would require an amendment to the Dispute Tribunal statute.

Plenary sessions of the judges of the United Nations Dispute Tribunal

25. Since July 2009, the judges of the Dispute Tribunal have held six one-week plenary sessions (July 2009, New York; December 2009, Geneva; June 2010, Nairobi; December 2010, Geneva; June 2011, New York; and April 2012, New York). For the reasons set forth in its previous reports, the Council continues to be of the view that enhancing and maintaining travel funding of the Dispute Tribunal to ensure that at least two plenary sessions of the Dispute Tribunal can be held annually is desirable, preferably on the basis that the plenary meetings are held in turn at the three seats of the Dispute Tribunal to support the decentralized nature of the system (see A/65/304, para. 27 and A/66/158, para. 13).

Support services for the UNDT

26. In its previous reports, the Internal Justice Council noted that practical experience with the operation of the Tribunal had underscored the need to ensure that adequate transcription, videoconferencing, interpretation and translation

services are available at each of the seats of the Tribunal, and the need for a budget to be provided for the acquisition of legal texts and online legal resources (see A/65/305, para. 30 and A/66/158, paras. 14-15). The Council notes that while progress has been made with respect to the availability of reliable recording for oral testimony and that those recordings can be made available to judges when requested, transcription remains an issue since transcripts are largely unavailable. The Council reiterates that when an appeal turns on discrepancies of questions of fact to which witnesses testify, a professional system of justice requires a reliable transcription of oral testimony. The Council notes that there is funding for translation and interpretation needs and that those aspects of the system appear to be functioning with respect to the three seats of the Dispute Tribunal.

27. Owing to the decentralization of the system, the Dispute Tribunal Registries are faced with the same challenge as the judges in ensuring consistency and standardization of practices across all three seats of the Tribunal. The Registrars meet to discuss procedural issues and practices at the same time that the judges convene their plenary sessions. The Internal Justice Council is of the view that there is a need to continue to provide funding for meetings of the Registrars and that additional funding for plenary sessions of the judges must include funding for the Registrars to meet as well, in order to assist in the coordination, identification and resolution of practices and other issues.

28. The Internal Justice Council notes the recommendation of the Advisory Committee on Administrative and Budgetary Questions that the support staffing of the ad litem judges of the Dispute Tribunal — namely three P-3 Legal Officer posts, two General Service (Other level) posts and one General Service (Local level) post — be continued, and be funded under general temporary assistance. The Council also notes, however, that from 1 January 2012, three P-2 posts of Associate Legal Officer in the Dispute Tribunal have been abolished. That has resulted in an extra burden on the remaining legal officers assigned in each Registry. Moreover, the Principal Registrar, who oversees both Appeals Tribunal and Dispute Tribunal Registries in all three duty stations, does not have support staff and draws mostly upon the resources of the Dispute Tribunal Registry in New York to assist her in the completion of her tasks.

29. Finally, it is noted that the President of the Dispute Tribunal, who is elected annually on a rotational basis, requires assistance, which further draws on the limited resources of the Registry at the concerned location. The Internal Justice Council reiterates the view expressed in its previous reports that appropriate arrangements should be made for administrative assistance to the President of the Dispute Tribunal (see A/65/304, para. 31 and A/66/158, para. 16).

B. United Nations Appeals Tribunal

Table 2
Activities of the United Nations Appeals Tribunal from 1 July 2009 to 30 April 2012

Cases received	321
Cases disposed of[a]	236
Total cases pending as at 30 April 2012	**85**

[a] In the course of disposing of the 236 cases, a total of 222 judgements were handed down, 87 orders were made and 8 hearings were held.

Annual sessions of the United Nations Appeals Tribunal

30. Although the initial budget for the Appeals Tribunal provided for 2 two-week sessions per year, in 2010 and 2011 the Tribunal held 3 two-week sessions to dispose of its caseload. While that requirement may not need to be a permanent feature, the Internal Justice Council is of the view that it is important to ensure that the Appeals Tribunal is able to hear and determine appeals from the Dispute Tribunal promptly to avoid the lengthy delays encountered in the previous appeal system. Another consideration is that several of the judges of the Appeals Tribunal act as serving judges in their own jurisdictions, and they have informed us that it is easier for them to attend 3 two-week sessions than 2 three-week sessions. Accordingly, it is the view of the Council that provision should be made, on the basis of the current caseload, for the Appeals Tribunal to continue to have 3 two-week sessions per year and that those sessions be held in all three seats of the Tribunal. The Council should continue to keep the matter under review and report on it as appropriate.

31. The Internal Justice Council also notes that while article 4 of the statute of the Appeals Tribunal provides that the Tribunal shall perform its functions in New York, it also permits sessions to be held in Geneva and Nairobi, as required by its caseload. The Council understands that the caseloads in Geneva and Nairobi justify the holding of sessions, but to date sessions have been held only in Geneva because of the additional costs associated with travelling to Nairobi. One of the key purposes of the system was decentralization. It is the view of the Council that it is desirable that the Appeals Tribunal hold sessions, on a rotating basis, in all three of the duty stations where the Dispute Tribunal is situated.

Open hearings

32. The Internal Justice Council is concerned — as was the Redesign Panel and the General Assembly — with ensuring that the new system is transparent and conforms to the principle of open justice. That means that the Tribunals should hold hearings rather than decide issues "on the papers", and that those hearings must be open to the public. The principle of open justice has generally not been followed at the Appeals Tribunal, where oral hearings have been few and far between. In its previous report, the Council expressed dismay that only two oral hearings were held in each of the two previous Appeals Tribunal sessions: "In the view of the Council, where a party wishes to have an open hearing, such a hearing should be held, unless there are good reasons for not doing so … the Council considers that this matter

should be kept under review" (see A/66/158, para. 29). Notwithstanding these comments, the 2012 spring session of the Appeals Tribunal had 37 cases, only one of which was listed for an oral hearing, although there were 7 cases where such a request was made, and a further 30 cases in which it was open to the Appeals Tribunal to direct an oral hearing. The Council has discussed the matter on several occasions with the Appeals Tribunal judges and is of the view that the failure to hold hearings does not comport with the Appeals Tribunal statute or with the requirement of transparency, or with the principle of open justice. The Council recommends that the next Internal Justice Council continue to keep the matter of open hearings at the Appeals Tribunal under review, particularly when important legal issues are involved, or when one of the parties requests an open hearing.

Reasoned decisions

33. Several players involved have raised concerns with the Council relating to the paucity of reasoning in the decisions of the Appeals Tribunal. The Dispute Tribunal judges generally set out their reasoning in full, but Appeals Tribunal decisions are sometimes brief and evince less persuasive reasoning than the first-instance judgement against which the appeal has been brought. The Internal Justice Council recognizes that some cases may be amenable to brief judgements, but suggests that in many cases persuasive reasoning would educate losing parties as to why the decision was against them, provide a guide to management and staff as to how they should regulate their conduct and help in the development of the law. Those factors would be particularly important when a reasoned judgement of the Dispute Tribunal is being reversed.

Remuneration of the judges of the United Nations Appeals Tribunal

34. In its previous reports, the Internal Justice Council has suggested that the matter of remuneration be kept under review (see A/65/305, para. 34 and A/66/158, para. 20). The Council considers that it is time for the General Assembly to reconsider the way in which Appeals Tribunal judges are remunerated. The judges hold part-time appointments, sitting each year for 3 two-week sessions. For the three judges ordinarily on the panel of an Appeals Tribunal case, payment takes the form of an "honorarium" of $2,400 for the judge selected to produce a draft judgement, and $600 for each of the other two judges participating in the decision for vetting and approving it. As mentioned in the Council's previous report, this honorarium system was adopted from the practice of the International Labour Organization Administrative Tribunal without any consultation with the Council (see A/66/158, para. 20). Again, as previously mentioned, the Council is concerned that to have an appellate court of three judges in which one of the three judges is paid $2,400 for writing the judgement and the others are paid $600 for participating in it, might create the perception that all three appellate judges are not contributing fully to the appellate decision. Moreover, the payment system might be a disincentive to the three judges to act collegially (i.e. closely together to determine the case and take equal responsibility for it). In addition, the judges of the Appeals Tribunal not only write judgements, they also perform a range of other tasks that are unremunerated under the current system. Most importantly, judges of the Appeals Tribunal take turns as duty judges for a month at a time when the Tribunal is not sitting and, during that period, may need to issue as many as 30 interlocutory orders in cases pending before the Tribunal — work for which duty judges are not presently

remunerated at all. In the view of the Council, this state of affairs is not desirable. It is the view of the Council that it may be appropriate to consider a more equitable system for remunerating judges of the Appeals Tribunal and consideration should be given to paying them a stipend for their full-time sessions, as well as remuneration on a daily basis (as the external jurist members of the Internal Justice Council are) for judgement-writing in periods when judges are not serving as duty judge.

Stipulated qualifications for United Nations Appeals Tribunal judges

35. In nominating appropriate candidates for the Appeals Tribunal, the Internal Justice Council has found itself constrained by the qualifications that the General Assembly has laid down in the statutes (about which the Council was not consulted). The requirement of 15 years of full-time judicial experience means that most candidates apply at the end of their judicial careers, attracted by a part-time retirement job. Those who are still sitting and had applied because they claimed their judicial superiors would be happy for them to take six weeks off are sometimes mistaken. The Council feels there is a real need to infuse some academic excellence into the Appeals Tribunal, but the statutes prevent, for instance, the appointment of professors of law, however learned. Nor can the Council draw on the pool of lawyers who have served for decades as part-time judges. One excellent candidate who had been a "Recorder" in the United Kingdom for 20 years had to be automatically rejected because he had never served full-time. Some of those part-time judges are exactly what is needed, precisely because they are able to manage part-time positions such as those of the Appeals Tribunal. In short, the Council feels that the statutes should be reviewed so as to remove the well-intentioned constraints that may impair the possibility of recruiting the candidates best able to shape the Appeals Tribunal as a pillar of judicial excellence.

C. Issues common to the United Nations Dispute Tribunal and the United Nations Appeals Tribunal

Status of United Nations Dispute Tribunal and United Nations Appeals Tribunal judges

36. In its previous reports the Internal Justice Council raised the issue of the status of both Dispute Tribunal and Appeals Tribunal judges (see A/65/304, para. 35 and A/66/158, para. 22). It recommended that, in order to attract the most able judges from national superior courts and to acknowledge the important work performed by the two Tribunals, judges of both Tribunals be accorded the rank of Assistant Secretary-General. The Council continues to be of that view, and notes in addition that the status of Dispute Tribunal judges is anomalous when compared with the status of other players involved in the system. For example, mediation agreements may be reached by the United Nations Ombudsman, who holds a post at the Assistant Secretary-General level, but such agreements can only be enforced by the Dispute Tribunal judges, who hold posts at the D-2 level. Moreover, the Council understands that there have been instances where the relative status of the judges of the Dispute Tribunal has been an issue with some higher-ranking officials when they are required to appear before the Tribunal, despite the fact that they are bound by its decisions. The success of the system relies not only upon the impartiality and independence of judges, but also upon the respect accorded to them and the observance of judgements issued by them.

Judicial oath of office and regulations binding judges

37. In both of its previous reports, the Internal Justice Council recommended that an oath of office specially suited to their duties be developed for judges of the Tribunals (see A/65/304, para. 38 and A/66/158, para. 23). The Council recommends the following:

> I swear/solemnly undertake to carry out my judicial duties as a judge of the United Nations Appeals Tribunal/United Nations Dispute Tribunal independently and impartially and without fear or favour and to abide at all times by the code of conduct for judges adopted by the General Assembly.

38. The Council also repeats the concern raised in its two previous reports that the question of whether judges fall within the scope of the Regulations Governing the Status, Basic Rights and Duties of Officials other than Secretariat Officials, and Experts on Mission (ST/SGB/2002/9) be determined (see A/65/304, para. 38 and A/66/158, para. 24). The Council reiterates that while it accepts that Dispute Tribunal judges should enjoy the privileges and immunities conferred on officials other than Secretariat officials under the Convention on the Privileges and Immunities of the United Nations, and Appeals Tribunal judges should enjoy the privileges and immunities conferred on experts on mission, it is crucial to the independence of the Tribunals that the code of conduct alone should regulate their ethical responsibilities.

Travel

39. The Internal Justice Council has continued to monitor the issue of travel in relation to the Tribunals and the Office of Administration of Justice since its previous reports (see A/65/304, para. 44 and A/66/158, para. 27). Experience continues to reinforce the need for the travel budget of the Office of Administration of Justice to meet the requirements as discussed in those reports.

Courtrooms and office space

40. There has been some progress during the last year in the provision of courtrooms for the Tribunals. A space has been identified for a courtroom in Nairobi, although it is not yet fully equipped. The Internal Justice Council understands that funding for that equipment has been provided. In New York, the courtroom has been completed and is functioning well. The Council understands that, with the completion of the capital master plan for the refurbishment of the main United Nations Headquarters Building, it has been proposed that the courtroom be moved to another space. The relocated courtroom would take some time to become functional and the Council emphasizes that care should be taken that the relocation does not cause further interruption to the work of the Tribunal or the Registry in New York. It is essential that the space identified provide adequate working space for the Registries and the Office of Administration of Justice. The Council further understands that the move may only be temporary, pending the identification of a final location for the courtroom.

41. In Geneva, the courtroom is functional but has no facilities for interpretation, which is required in Geneva. A means of extending the facilities to add interpretation booths has been identified, but the work has not yet been undertaken.

42. The Internal Justice Council repeats that if the new system is to be "independent, professional and accountable", functional courtrooms with the following facilities, inter alia, need to be provided: two entrances (one for judges and one for legal representatives and members of the public); facilities for the recording of proceedings; facilities for reliable videoconferencing so that testimony can be taken from witnesses in other duty stations; and facilities for simultaneous interpretation. In addition, judges of both the Dispute Tribunal and Appeals Tribunal, when working at a duty station, need to be provided with offices that are equipped with telephones, computers and Internet access.

Judicial symposium on the work of the Tribunals

43. There is a matter in respect of which the Council must record its disappointment. The Council has been keen to foster academic interest in the new system of the United Nations — and in this regard it notes that the new system has been praised by the *Economist* and the *Wall Street Journal*. Scrutiny of judicial work is always helpful to developing legal systems. Such scrutiny would, the Council believes, not only bring the system to greater public attention, but also enable it to be compared and contrasted with other institutional administrative systems in a manner that could only be beneficial. The Internal Justice Council, and particularly its Chair, worked with Brandeis University in the United States of America (which has a well-established programme for training international judges) and Osgoode Hall Law School in Canada (which has a fine reputation for legal training) to organize a symposium with the United Nations judges about the performance of the internal justice system. To the Council's great disappointment, the project had to be shelved. The members of the Council think that this was a missed opportunity and hope that the new Council will be able to spearhead a similar exercise.

Code of conduct for legal representatives

44. The Internal Justice Council has raised the issue of a code of conduct for legal representatives in both of its previous reports (see A/65/304, para. 41 and A/66/158, para. 26). The General Assembly requested that the Secretary-General, in consultation with the Council, report at the sixty-seventh session of the General Assembly on his views regarding the proposal of a code of conduct for legal representatives (see resolution 66/237, para. 46). At the time of writing, no consultation had yet taken place. Nevertheless, the Council remains of the view that establishing a code is a matter of great importance that should be addressed as soon as possible.

VI. Office of Staff Legal Assistance

45. The Office of Staff Legal Assistance was established by the General Assembly at its sixty-second session in its resolution 62/228, on a recommendation in the report of the Redesign Panel (A/61/205). The bases for the Panel's recommendation were that the Panel of Counsel, established in 1984 to provide assistance and representation to staff in their disputes with management, was not effective in that there was a serious disparity in the calibre of legal assistance given to staff as compared to the legal resources available to management, resulting in an egregious inequality of arms in the internal justice system.

46. The Office, as established in paragraph 14 of resolution 62/228, consisted of seven Legal Officers and three Legal Assistants;[3] another Legal Officer was added in 2010.[4] The structure leaves no room for career development to the Legal Officers, who will inevitably have to transfer elsewhere after a few years, resulting in a serious diminution of experience and expertise within the Office of Staff Legal Assistance; accordingly, the Internal Justice Council previously recommended the addition of two posts at the P-4 level (see A/65/304, para. 70 and A/66/158, para. 42).

47. The current mandate of the Office of Staff Legal Assistance is to provide legal assistance to staff members and their volunteer representatives in processing claims through the formal administration of justice system (see resolutions 61/261, para. 23; 62/228, paras. 12-13; 63/253, para. 12; and 65/251, para. 38). The Internal Justice Council notes that the General Assembly intends at its sixty-seventh session to revert to the issue of "the mandate, scope and functioning" of the Office (see resolution 66/237, para. 28). In the light of that intention, the Council provides its views on that issue in the present report.

48. The Internal Justice Council has kept the work of the Office of Staff Legal Assistance under close review since the establishment of the Office and is satisfied that it has been of great value to the justice system. Key stakeholders have consistently shared that opinion of the Office, including those who have been recently interviewed by the Council. The Management Evaluation Unit sees the Office as a mechanism that explains to staff when claims have no merit, and thereby filters out those claims from the system. That process also educates staff on their rights and obligations. The Registries have noted that claims presented by the Office are in accordance with proper form and procedure, whereas those presented by staff *pro se* often require considerable discussion and amendment. The judges have observed that the Office counsel present claims efficiently, with citation of relevant authorities, thereby facilitating judicial work. Indeed, on more than one occasion, when staff are represented *pro se* but are unable to present their cases effectively, judges have requested the Office to help the court by acting as counsel for staff.[5] The fact that the Office receives from staff more requests for assistance than it can handle within its resources can be regarded as an endorsement by staff. In addition, the staff of the Office of the Ombudsman on occasion requests the Office of Staff Legal Assistance to give them a formal legal assessment of a case that they are handling for informal settlement.

49. The Internal Justice Council also wishes to examine three issues that have recently been discussed in connection with the Office of Staff Legal Assistance.

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[3] The personnel consisted of one Chief of Unit (P-5), two Legal Officers (P-3 and P-2) and three Legal Assistants (General Service (Other level)) in New York and one Legal Officer (P-3) each in Addis Ababa, Beirut, Geneva and Nairobi.

[4] This P-3 post, located in Nairobi, is currently funded from the support account for peacekeeping operations.

[5] For reported cases, see UNDT/NBI/2009/002 (*Atogo*), (Order No. 042 (NBI/2012), paras. 7 and 8). An applicant was also referred to the Office of Staff Legal Assistance in UNDT/NBI/2011/031 (*Rawat*).

A. Representation of staff members by the Office of Staff Legal Assistance before the Tribunals

50. The current internal justice system follows what is often referred to as the adversarial model. Under that model, the two sides of a dispute need to be presented before an impartial judge, who adjudicates on the basis of the evidence and arguments presented to the court. If justice is to prevail, the case on each side must be presented effectively. The facts of cases are often complex, and so are the applicable United Nations legal regulations, rules and administrative issuances. It is very difficult for a staff member without legal training to adequately present a case. The ethical consideration that both sides to the dispute should have "an equality of arms" before the Tribunal is evident.[6] Moreover, a factor that has been repeatedly stressed by the General Assembly is that the new system of justice should promote accountability (see resolutions 61/261, eighth preambular para.; 62/228, first preambular para.; 63/253, second preambular para.; 64/233, para. 8 (f); and 65/251, para. 7). For wrongdoing and consequent accountability to be established through judicial decisions, both those elements must be professionally established to the requisite standard.

51. Counsel practising outside the United Nations system also have difficulty in mastering the United Nations legal system and its associated personnel practices, and are unfamiliar with the means of redress available. The issue has been recognized by management and by the Secretary-General.[7]

52. Giving advice to a staff member after the study of the circumstances of his or her case, and then, if the claim is meritorious, helping him or her to file a case before the Dispute Tribunal, and finally appearing at hearings on the staff member's behalf to advance the case by leading evidence or adducing arguments is a seamless natural progression. Making the staff member retain outside counsel, who would have to master the case from the beginning, would impose a serious hardship on the staff member. The Council is aware that there has been some support for a proposal to turn the Office of Staff Legal Assistance into a legal advisory service only, which would not have the right or the resources to represent staff in filing actions or at interlocutory stages or in Tribunal hearings. For the above reasons, the Council must warn very firmly against any such change. It would mean that the Office would not have the standing, which is so necessary for the operation of an adversarial system, to persuade potential litigants against bringing hopeless cases, to negotiate effective resolutions "at the court door" with management, to help staff avoid the technical legal pitfalls in litigation, to provide "equality of arms" for staff within the overall

[6] The consideration has been recognized by the Secretary-General, who in his report on the administration of justice at the United Nations stated: "Consistent with the principle of making the internal justice system more professionalized, access to legal assistance provided by legally qualified full-time staff will help to ensure that both parties operate on an equal footing in the formal justice system" (see A/62/294, para. 25).

[7] The Secretary-General, in his report, also reiterated the view of management presented at the seventh special session of the Staff-Management Coordination Committee (see SMCC/SS-VII/2007/2) that experience had shown that when staff members resorted to outside counsel for representation, unfamiliarity with the legal framework applicable to the United Nations system could contribute to difficulties in the resolution of disputes. Accordingly, management fully supported strengthening the legal resources available to staff, by expanding the Panel of Counsel into an office with budgeted posts recommended by the Panel, to be staffed with legally qualified and proficient counsel on a full-time basis.

system or to provide the Internal Justice Council with full information, from a claimant's perspective, as to the functioning of the system. Those are just some reasons why the Office needs to retain its full forensic role, and the Council notes that the lack of an equivalent organization was one of the main reasons identified by the Redesign Panel and the expert report of the staff unions for the dysfunction in the former system.

B. Funding the Office of Staff Legal Assistance

53. From the time that the new justice system was established in 2007 by the General Assembly in its resolution 61/261, the Assembly has noted the need for providing professional legal assistance to staff through a staff legal office and for establishing a staff-funded scheme that would provide legal advice and support to the staff (see resolutions 61/261, para. 24; 62/228, para. 17; 63/253, para. 14; and 65/251, para. 40). No satisfactory staff-funded scheme has so far emerged. The Internal Justice Council has noted that, at its sixty-sixth session, after considering the report of the Secretary-General on the administration of justice at the United Nations (A/66/275), the Assembly requested the Secretary-General to submit a report including a proposal for a mandatory staff-funded mechanism for the representation of staff members (see resolution 66/237, para. 28). The Internal Justice Council hopes that rapid progress will be made on a funding proposal so that the Office of Staff Legal Assistance can be placed on a sound financial footing. In this connection, the Council shares two of the assumptions that the Secretary-General made in his report: that the Office posts created pursuant to resolution 63/253 would continue to be funded through the regular budget, and that the staff-funding mechanism ultimately adopted would serve to offset some of the costs of enhancement to the current staffing table as proposed by the Secretary-General (see A/66/275, annex I, para. 2).

C. The volume of litigation

54. There has been a concern that the volume of litigation under the new system of justice is larger than that under the former system, and that a culture of litigation may develop (see comments in para. 18, above). Even if the volume now is slightly larger, the Internal Justice Council does not believe that the availability of Office of Staff Legal Assistance resources to staff members has contributed to this increase. In fact, the number of cases in which the Office represented staff dropped in 2011 as compared with 2010.

55. On receipt of a request for assistance from a staff member, the first endeavour of the Office of Staff Legal Assistance is to settle the dispute without litigation.[8]

[8] On receipt of a request for assistance, the Office informs the staff member that the General Assembly, in its resolution 63/253, reaffirmed that the informal resolution of conflict was a crucial element of the system of administration of justice, and emphasized that all possible use should be made of the informal system in order to avoid unnecessary litigation, and that the Office may determine, upon assessment of a case involving an appeal of an administrative decision, that an informal resolution of the matter should be explored first, through the Ombudsman or other appropriate channels, before it will assist with formal processes within the internal justice system.

Furthermore, the Office will not pursue non-meritorious claims before the Tribunals or claims that are in any way unethical.[9] The Assembly has recognized that the Office provides assistance to staff in an independent and impartial manner (see resolution 65/251, para. 36).

56. As noted in the paragraphs above, the Internal Justice Council is of the view that the Office of Staff Legal Assistance, as currently managed within the Office of Administration of Justice, has been a successful mechanism for providing staff with legal assistance.

VII. Office of Administration of Justice

57. The Office of Administration of Justice continues to be crucial to the effective functioning of the internal system of justice within the United Nations. The Council continues to consider that the rank of the Executive Director of the Office ought to be raised to that of Assistant Secretary-General (see A/66/158, para. 33). It also notes, as it did in paragraph 32 of its previous report, that the Office currently has a very limited number of support staff. Again, the Council urges the establishment of additional posts to enhance the functioning of the Office.

VIII. Other matters

58. The Internal Justice Council does not report further on the Management Evaluation Unit, which it discussed in its previous report (ibid., paras. 48-53). The Council continues to believe that the work of the Unit is important to the success of the new system.

59. Similarly, the Internal Justice Council notes that it met with members of both the Office of Legal Affairs and the Administrative Law Section in February 2012. At those meetings, the Council was informed that both offices now consider themselves to be fully staffed at this stage insofar as the internal justice system is concerned. When asked, neither had suggestions for inclusion in this report. The Council was pleased to hear that the staffing shortages previously experienced by the offices had been resolved, and hopes that the staffing shortages of the Office of Administration of Justice, the Tribunals and the Office of Staff Legal Assistance will be addressed in the near future.

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[9] The consent form states that the Office will make an assessment of whether it is in a position to provide legal assistance in a case, and it may determine that a case is unlikely to succeed and it will not be able to provide legal assistance and representation.
This discretion by the Office has been recognized by the Dispute Tribunal in para. 27 of UNDT/2009/093 (*Syed*), in para. 37 of UNDT/2010/025 (*Kita*) and in para. 50 of UNDT/2011/024 (*Worsley*).
The consent form also states that the Office-appointed legal counsel may withdraw for good cause from any matter in which he or she has agreed to act on a Client's behalf. "Good cause" includes, but is not limited to, any situation in which a client seeks to insist upon a course of action incompatible with counsel's duties under the United Nations staff rules and regulations, the law and legal ethics, and to the United Nations Tribunals as officers of court.
All Office counsel are staff members and members of the bar of a Member State and bound by the codes of ethics of the respective bars. They are also subject to a self-imposed written code of conduct.

IX. Conclusion

60. The Internal Justice Council, while believing the new system has progressed fairly well since its inception, nevertheless remains convinced, as stated in its previous report, that the desperate shortage of resources is a serious threat to the new system and that if this insufficiency is not addressed, the new system may well become plagued by the very problems and delays it sought to avoid (see A/66/158, para. 4). Of particular importance is the need to establish three additional full-time judicial posts at each of the duty stations that currently hosts the Dispute Tribunal — Geneva, Nairobi and New York. Without six full-time judges, the work of the Dispute Tribunal may well become mired in the delays that bedevilled the old system of justice. The successful functioning of the system to date has been the result of commitment and hard work well beyond the call of duty of many of the role players, including the judges of the two Tribunals, as well as the staff of the Registries, lawyers representing management and staff, and the team in the Office of Administration of Justice. It is clear to the Council that this level of commitment is unsustainable in the long run. The Council is of the view that if the necessary resources are made available, however, the new system will continue to improve as all involved players come to fulfil the potential of the system.

(*Signed*) Kate **O'Regan**

(*Signed*) Sinha **Basnayake**

(*Signed*) Jenny **Clift**

(*Signed*) Frank **Eppert**

(*Signed*) Geoffrey **Robertson**

Annex I

Memorandum from the judges of the United Nations Appeals Tribunal

Ambiguous status

1. The United Nations Appeals Tribunal judges deplore the Organization's continued inability and/or unwillingness to grant them a proper and dignified rank within the system. They have on numerous occasions voiced their concern about this issue to the General Assembly.

2. The Appeals Tribunal judges agree with the United Nations Dispute Tribunal judges that the lack of a senior rank for the judges in a hierarchical organization such as the United Nations affects their independence and authority, which in turn undercuts the effectiveness of the new system of internal justice.

3. In support of their request for a higher level status, the Dispute Tribunal judges cite examples of the rank of the judges of other international tribunals as well as the rank of the United Nations Ombudsman. The Appeals Tribunal judges express their full support and reiterate their request that they be granted the category of Under-Secretary-General.

Inadequate compensation

4. Under the current compensation scheme endorsed by the General Assembly, the Appeals Tribunal judges are paid on a case-by-case basis. For disposal of an appeal, the drafting judge receives $2,400 and the sitting judges receive $600 each.

5. This payment structure fails to take into account the duties and responsibilities that the Appeals Tribunal judges are required to take on in addition to the adjudication of cases. Given the experience of the first year of the Tribunal and the unrealistic workload that the rules of procedure impose on the President of the Tribunal as a part-time judge, the Appeals Tribunal has decided in plenary meeting that it is reasonable for the President to delegate his or her powers to deal with procedural matters arising in the course of the regular work of the Tribunal when it is not in session to the other judges, who take turns to serve as duty judge on a monthly basis.

6. The Appeals Tribunal has issued 86 orders dealing with a broad range of issues, including motions seeking leave to file additional pleadings, to adduce additional evidence and to file amicus curiae brief; requests for the extension, suspension or waiver of time limits; requests relating to the confidentiality of documents; requests for temporary relief; requests for withdrawal of appeals (closure of a case); and requests for directions.

7. On average, a judge serves as duty judge for close to two months a year. As a duty judge, he or she is required to check e-mails on a daily basis, liaise with the Registry staff, make phone calls, take decisions on judicial and procedural issues and, if required, liaise with the President.

8. The Appeals Tribunal judges are debating whether the duty judge system is sustainable if no additional compensation is granted for this time-consuming work.

To abolish this creative and effective system and revert to the practice of the former Administrative Tribunal to either address procedural matters in session or to assign to the Registry staff the task of taking, in fact, judicial decisions would jeopardize the timely and transparent disposal of appeals and the credibility of the Tribunal as a professional court as a whole.

9. The Internal Justice Council in its report noted the inadequacy of the current payment structure and recommended additional allowances for the Appeals Tribunal judges to at least partially cover their administrative and logistical expenses when working at home.

10. The Appeals Tribunal judges believe that the current payment structure needs to be revisited and that the additional allowances as proposed by the Internal Justice Council or a higher honorarium should be instituted to reflect the more complex and heavier workload of the Appeals Tribunal judges.

Domestic taxation on honorariums

11. As the Appeals Tribunal judges are not considered staff members, their honorarium is not subject to staff assessment. It thus becomes part of the judges' annual income, subject to marginal (usually much higher) taxation in their home countries.

12. An Appeals Tribunal judge receives on average $50,000 per year as an honorarium. After it is taxed at home, however, only approximately $30,000 remains as take-home income.

13. The Appeals Tribunal judges reiterate their request that the General Assembly consider equating them to staff members and subject their honorariums to (the lower) staff assessment so that their United Nations income in the form of honorariums is exempt from domestic taxation.

Annex II

Memorandum from the judges of the United Nations Dispute Tribunal on systemic issues

A. Institutional stability: number of permanent judges in each duty station

1. The General Assembly created a deliberately decentralized system of internal justice to ensure easier access to justice for staff members. Access to justice is denied if it is delayed.

2. After nearly three years, the number of new cases filed with the Tribunal demonstrates the evident need for a sufficient number of permanent judges, which is six full-time judges and two half-time judges. There was a noticeable increase in the trend of new cases during the last year. In 2010, the Tribunal received an average of 13.3 cases per month, and in 2011 this figure rose to 23.4 cases per month. During the period from July to December 2011, the Tribunal accumulated a new backlog at the average rate of 4.7 cases a month, compounded by the average rate of backlog accumulation of 0.9 cases a month for the period from January to March 2012.

3. Almost three years of experience has shown that the contribution of an additional ad litem judge in each duty station has been critical to the proper functioning of the Tribunal. When an ad litem judge has not been available, the burden on the sole remaining judge and the time taken for disposal of cases has increased. The composition of the Tribunal in New York has changed three times since July 2009 owing to the resignation of two ad litem judges in 2010 and in 2011. As a result, New York was served by one full-time judge alone for 8 of the 32 months since the inception of the Tribunal.

4. The uncertainties inherent in the ad litem system threaten the ability of the Tribunal to maintain its present workflow. The three ad litem positions need to be regularized so that there are two full-time judges at each duty station. If there is only one judge at each duty station the following problems arise:

(a) In the absence of its sole judge, for example in cases of leave, sickness or resignation, that location of the Tribunal is unable to function;

(b) If the sole judge in a location is recused, the case has to be transferred to another location, further away from the parties and the potential witnesses;

(c) A single judge is unable to achieve the timely disposal of urgent suspension of action applications without compromising the disposal of substantive applications;

(d) It is impossible to efficiently establish three-judge panels unless two judges are present at the duty station concerned;

(e) The President of Dispute Tribunal, in addition to his or her judicial duties and directing the work of the whole Tribunal during the term of office, also has to attend to other Presidential functions, including chairing and preparing fortnightly videoconferences with all the duty stations, the drafting of various reports and attending to correspondences. Without another judge at the location of the President, the flow of disposal of cases cannot be maintained.

5. For the above reasons, the positions of ad litem judges should be regularized.

B. Matters affecting the independence of the system of administration of justice

Security of tenure

6. The independence of the Tribunal is best guaranteed by judges who have security of tenure in accordance with international principles. That independence is potentially compromised when the Tribunal is staffed by judges appointed for short terms, and who are subject to frequent re-election or reappointment, with ensuing productivity and cost implications. The ad litem judges continue to face the uncertainty of an extension of tenure at the end of every year; that does not augur well for the independence of the judiciary. The recent appointment of the new ad litem judge for New York for the period from 16 April 2012 to 31 December 2012 is disconcerting from a pragmatic point of view, in the light of the fact that there has been no ad litem judge in New York since July 2011 and that the new judge will not be able to assume her functions before early June 2012.

Separation of powers

7. The boundaries of functions and responsibilities between the Internal Justice Council, the Office of Administration of Justice and the Dispute Tribunal are presently blurred. This threatens the judicial independence mandated by the General Assembly in its resolution 63/253.

8. There is a need for a more detailed articulation of the roles and functions of the Internal Justice Council and for better resourcing to enable it to carry out its functions independent of the Office of Administration of Justice and the Tribunal. There is also a need for the Office to have clearly defined administrative functions and support personnel to enable it to meet its responsibilities without calling on the resources of the Dispute Tribunal. Currently, there is disproportionate usage of the Tribunal's legal officer resources by the Office of Administration of Justice in New York, which hampers the judicial work of the Tribunal. The judges advocate for independent support personnel for the Office of Administration of Justice in the New York office.

Status of the judges

9. The judges' core task is to adjudicate matters relating to decisions taken or endorsed at a senior level in the relevant department or office, including at the Assistant Secretary-General or Under-Secretary-General levels. In a hierarchical organization such as the United Nations, there may be a perception that decisions taken by officials at a lower level than that of the principal decision maker may be disregarded or derogated from. There have been examples of a lack of respect for the Tribunals from elements within the organization, including from some senior personnel who appear not to acknowledge the status of the Tribunals and the judges. This was made apparent in section IV of the Secretary-General's most recent report to the General Assembly (A/66/275).

10. It is worth noting that the Redesign Panel and the Secretary-General proposed that the posts of both the Executive Director of the Office of Administration of Justice and the judges be at the Assistant Secretary-General level. While the functions remained the same as proposed, the posts were set at the D-2 level for budgetary reasons.

11. The D-2 status of Dispute Tribunal judges is anomalous with the status of others in the system. For example, most other international judges, such as those of the International Court of Justice, the International Criminal Tribunal for the Former Yugoslavia, the International Criminal Tribunal for Rwanda and the specialized Tribunals such as the Special Court for Sierra Leone, the Extraordinary Chambers in the Courts of Cambodia and the Special Tribunal for Lebanon, are at the Under-Secretary-General level. The United Nations Ombudsman, who is part of the informal system of internal justice, is at the Assistant Secretary-General level, yet mediation agreements brokered by the Ombudsman can only be enforced by the judges of the formal system, who are at the D-2 level.

12. For the above reasons, the judges of the Tribunal should be placed at the Assistant Secretary-General level.

Reporting line

13. The judges have no direct reporting line to the General Assembly. Bearing in mind the need for impartiality and independence of the judiciary and the judges' position in the hierarchy of the United Nations, there should be a direct reporting line from the Tribunals to the General Assembly instead of processing all views and requests of the judiciary through a report prepared and submitted by the Secretary-General, who as the head of the United Nations administration acts as a party (the Respondent) in all cases before the Tribunals. Such a reporting line has been established for other United Nations Tribunals and should be granted to the Dispute Tribunal and the Appeals Tribunal. Reporting through the reports of the Secretary-General, even through the Internal Justice Council, compromises the independence of the Tribunal.

14. Furthermore, it is inappropriate that the formal part of the new system of administration of justice should report through the Secretary-General (the Respondent) or even the Internal Justice Council, when the informal part of the system of administration of justice — the Office of the Ombudsman — has a direct reporting line to the General Assembly.

15. The judges of the Tribunal are of the view that it is essential that their views be conveyed to the General Assembly through a direct reporting line.

C. Transparency of the system of administration of justice

Courtroom and access to the public

16. It is essential for the transparency of the internal justice system that each location has a proper courtroom that allows easy access to the public. In New York, the forthcoming moves related to the capital master plan will incur additional costs and have the potential to compromise and disrupt proceedings and further delay the disposal of cases in New York. In this regard, it is essential that the Tribunal in New York be located in the main Secretariat Building, ensuring visibility and ease of access to all concerned and establishing the formal system of justice as an essential component in achieving the commitment of the General Assembly to an independent, transparent, professionalized, adequately resourced and decentralized system of administration of justice. For all these reasons, the judges believe that the Tribunal should be centrally located in the Headquarters Building.

Transcripts of hearings

17. The transparency of the system of administration of justice is impaired by the lack of professional and reliable records of proceedings. No funds have been allocated for recordings or for the transcriptions of hearings. Transcripts are important for matters taken on appeal, especially in cases in which there are complicated or many factual findings.

18. The judges strongly support the allocation of sufficient funds for the construction or renovation of a courtroom in New York, as well as the production of professional recordings and transcripts of hearings in all duty stations of the Tribunal.

D. Adequate resourcing

Staffing

19. The Registries' current staffing resources do not allow for the provision of proper substantive, administrative and technical support to the judges. For instance, the Registries provide support to half-time judges during their tour of duty without increase of resources. Since 1 January 2012, three P-2 level posts of Associate Legal Officer have been abolished. That has resulted in placing an extra burden on the remaining legal officers assigned in each Registry. In addition, the Principal Registrar, who oversees both the Appeals Tribunal and the Dispute Tribunal Registries in all three duty stations, does not have staff and draws mostly upon the resources of the Dispute Tribunal Registry in New York to assist her in the completion of her tasks.

20. Finally, it is noted that the President of the Tribunal, who is elected on a rotational basis, deals not only with matters concerning the judges, correspondence with the Internal Justice Council, preparing reports and directing the work of the Tribunal; but also with applications for three-judge panels and requests for the recusal of a judge. The President requires assistance, sometimes on highly confidential matters, and is constrained to draw on the limited resources of the Registry at the concerned location. In view of the rotational basis of the presidency, it might be appropriate for the President to have a member of staff allocated to assist him or her during the presidency.

Funding for two plenary meetings per year

21. By virtue of the decentralization of the system, it is necessary that the judges, who are located in three different duty stations in different time zones, meet at least twice a year in order to address matters of jurisprudence, practice directions, rules of procedure, standardization of practices and issues raised by the General Assembly and generally to attend to housekeeping issues. It is evident from the experience of the last three years that a minimum of two plenary meetings, in which the judges and the Registrars meet in person, is essential, as discussions on those important issues are difficult to conduct by e-mail and video. No funds have been specifically allocated for a second plenary. The Executive Office is forced to draw on other resources to cover the cost of a second, much-needed plenary, and was unable to do so this year, resulting in the deferral of important issues.

Travel funds for Registry staff

22. Owing to the decentralization of the system, the Registries are experiencing the same problem judges face. Travel funds should be allocated to the annual meeting of the Registry staff of all three duty stations to ensure the consistency and standardization of practices among all three duty stations. Similarly, travel funds should be specifically allocated to the Principal Registrar so she can properly oversee all three Registries.

Information and communications technology resources

23. The search engine currently used in accessing and researching judgements and orders of the Dispute Tribunal and the Appeals Tribunal is rudimentary and does not allow effective searches of published rulings. Accordingly, sufficient funding should be allocated to assist the Office of Administration of Justice in establishing an effective online search tool to facilitate dissemination of the jurisprudence of the new professionalized internal justice system.

24. Accordingly, the judges of the Tribunal strongly advocate for an essential increase of resources allocated to the Registries so they can fulfil their mandate.

E. Adequate representation of applicants before the Tribunals

25. Unrepresented litigants have a negative impact on the Tribunal's workload. These litigants often do not understand the legal process and tend to file numerous irrelevant documents and submissions, swamp the Registries with unnecessary or inappropriate queries and requests and generally bog down the system, causing delays in proceedings.

26. The right to representation, guaranteed by the Universal Declaration of Human Rights and enshrined in the principle of equality of arms, is an essential element of the new system of administration of justice, and the role of the Office of Staff Legal Assistance should continue to be that of assisting staff members not only in processing claims, but in representing applicants before the Tribunals.

F. Delay in the replacement/election of judges

27. Experience has shown that in the event of a judge resigning or departing on expiry of his or her term of office, the process for his or her replacement is inordinately lengthy and results in an ever-increasing backlog of cases. No ad litem judge has been assigned to the New York duty station since July 2011, and the duty station has operated with only one full-time judge for more than 8 out of a total 32 months of operation.

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Human resources management

Amendments to the Staff Rules

Report of the Secretary-General

Summary

Consistent with staff regulation 12.3, the present report contains the full text of new rules and amendments to existing rules that the Secretary-General proposes to implement as of 1 January 2013. The report also provides the rationale for those amendments, which are mostly of a technical nature.

The Secretary-General recommends that the General Assembly take note of the amendments to the Staff Rules set out in the annex to the present report.

* A/67/50.

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1. Staff regulation 12.3 provides that the full text of provisional staff rules and amendments shall be reported annually to the General Assembly.

2. The proposed amendments contained in the annex to the present report will take effect as of 1 January 2013.

Rules

3. In rule 1.2, Basic rights and obligations of staff, subparagraph (p), Conflict of interest, is amended to bring it in line with the decision made by the General Assembly in paragraph 12 of its resolution 66/234.

4. In rule 3.6, Dependency allowances, subparagraphs (a) (i) and (c) are amended for clarity.

5. In rule 3.13, Mobility allowance, subparagraphs (a) and (b) are amended to reflect the decision of the International Civil Service Commission in its annual report of 2011, as reflected in General Assembly resolution 66/235, as well as to precisely prescribe when the allowance is payable.

6. A new rule 3.15, Additional hardship allowance for service in non-family duty stations, is introduced to reflect the decision of the General Assembly in its resolution 65/248 to introduce the allowance.

7. Former rule 3.15, Salary advances, is renumbered as rule 3.16.

8. Rule 3.16, Retroactivity of payments, is renumbered as rule 3.17.

9. Rule 3.17, Deductions and contributions, is renumbered as rule 3.18.

10. Rule 3.18, Repatriation grant, is renumbered as rule 3.19.

11. Former rule 3.19, Mission assignments, has been deleted since the General Assembly, in its resolution 65/248, approved the recommendations of the International Civil Service Commission regarding the harmonization of the designation of non-family duty stations on the basis of a security assessment, rather than by mission, and the change of official duty station after three or six months.

12. In rule 4.12, Temporary appointment, subparagraph (b) has been amended to reflect the provisions of General Assembly resolution 63/250.

13. In rule 4.15, Senior Review Group and central review bodies, a new subparagraph (f) is inserted, regarding review bodies for the separately administered funds and programmes. The amendment allows these funds and programmes to establish their own review bodies. This text was already included in the 100 series of the Staff Rules. The other subparagraphs of this rule have been renumbered.

14. In rule 5.2, Home leave, subparagraphs (b) (iii), (e) (i) and (ii), (f), (g), (i) and (l) (ii) have been amended to allow for the introduction of a point system.

15. In rule 5.3, Special leave, subparagraph (a) (iii) is now subparagraph (f). Subparagraph (e) has been amended to clarify the provisions of this rule and integrated into new subparagraph (*p*). The other subparagraphs of this rule have been renumbered.

16. In rule 7.2, Official travel of eligible family members, subparagraph (c) was amended to make clear that the Organization will not install eligible family members in, or pay for their travel to, non-family duty stations.

17. In rule 7.3, Loss of entitlement to return travel expenses, subparagraph (a) has been amended to include a shorter period for staff at designated duty stations, since home leave at these duty stations occurs every 12 months instead of every 24 months.

18. In rule 9.8, Termination indemnity, subparagraph (f) has been amended to make it clearer.

19. In rule 9.11, Last day for pay purposes, subparagraph (a) (vii), the second column of the table has been renamed to clarify that it concerns not an extension of appointment but rather a payment that is made.

20. **The Secretary-General recommends that the General Assembly take note of the amendments to the Staff Rules set out in the annex to the present report.**

Annex

Text of amendments to the Staff Rules

Rule 1.2
Conflict of interest

(p) A staff member whose personal interests interfere with the performance of his or her official duties and responsibilities or with the integrity, independence and impartiality required by the staff member's status as an international civil servant, shall disclose any such actual or possible interest to the head of office and, except as otherwise authorized by the Secretary-General, formally excuse himself or herself from participating with regard to any involvement in that matter which might give rise to a conflict of interest situation.

Rule 3.6
Dependency allowances

(a) For the purposes of the Staff Regulations and Staff Rules:

(i) A "dependent spouse" is a spouse whose occupational earnings, if any, do not exceed the lowest entry level of the United Nations General Service gross salary scales in force on 1 January of the year concerned for the duty station in the country of the spouse's place of work. In the case of staff in the Professional and higher categories and in the Field Service category, the entry level amount referenced shall not at any duty station be less than the equivalent of the lowest entry level salary at the base of the salary system (G-2, step I, for New York);

(c) Subject to the provisions of staff regulation 3.4 (a), the full amount of the dependency allowance provided under that regulation and under the Staff Rules in respect of a dependent child shall be payable, except where the staff member or his or her spouse receives a direct governmental grant in respect of the same child. Where such a governmental grant is made, the dependency allowance payable under this rule shall be the approximate amount by which the governmental grant is less than the dependency allowance set out under the Staff Regulations and Staff Rules. No dependency allowance is payable if the governmental grant is equal to or exceeds the rate set out under the Staff Regulations and Staff Rules.

Rule 3.13
Mobility allowance

(a) ...

The mobility allowance shall be discontinued upon receipt of such allowance for five consecutive years at the same duty station. In the exceptional case of staff members who remained at the same duty station at the explicit request of the Organization or for compelling humanitarian reasons, the mobility allowance is payable for one additional year.

(b) The amount of the mobility allowance, if any, and the conditions under which it will be paid, shall be determined by the Secretary-General taking into account the length of the staff member's continuous service in the United Nations common system of salaries and allowances, the number of duty stations at which he

or she has previously served for a period of one year or longer and the hardship classification of the new duty station to which the staff member is assigned.

Rule 3.15
Additional hardship allowance for service in non-family duty stations

(a) When a duty station has been designated as non-family, the presence of eligible dependants of the staff member shall not be authorized at the duty station, unless exceptionally approved by the Secretary-General;

(b) Staff in the Professional and higher categories and in the Field Service category, and staff in the General Service category considered internationally recruited pursuant to staff rule 4.5 (c), who are appointed or reassigned to a non-family duty station may be paid a non-pensionable additional non-family hardship allowance, unless the Secretary-General has exceptionally approved the presence of eligible dependants of the staff member at the duty station pursuant to staff rule 3.15 (a).

Rule 4.12
Temporary appointment

(b) The appointment of a staff member who has served for the maximum period as described in paragraph (a) above may be renewed for up to one additional year when warranted by surge requirements and operational needs related to field operations and special projects with finite mandates under circumstances and conditions established by the Secretary-General.

Rule 4.15
Senior Review Group and central review bodies

Central review bodies

(f) Executive heads of separately administered programmes, funds and subsidiary organs of the United Nations to whom the Secretary-General has delegated the authority to appoint, select and promote staff may establish advisory bodies to advise them in the case of staff members recruited specifically for service with those programmes, funds or subsidiary organs. The composition and functions of such advisory bodies shall be generally similar to those of the central review bodies established by the Secretary-General.

Rule 5.2
Home leave

(b) (iii) In the case of home leave following the return from a family visit travel under staff rule 7.1 (a) (vii), normally not less than nine months of continuous service have elapsed since return from the family visit travel.

(e) (i) A staff member's home leave shall fall due upon completion of twenty-four months of qualifying service;

(ii) After falling due, home leave may be taken within twelve months, subject to the exigencies of service.

(f) A staff member may be granted advance home leave, provided that normally not less than twelve months of qualifying service have been completed or

that normally not less than twelve months of qualifying service have elapsed since the date of return from his or her last home leave. The granting of advance home leave shall not advance the eligibility for, or due date of, the next home leave. The granting of advance home leave shall be subject to the conditions for the entitlement being subsequently met. If these conditions are not met, the staff member will be required to reimburse the costs paid by the Organization for the advance travel.

(g) If a staff member delays taking his or her home leave beyond the twelve-month period after which it falls due, such delayed leave may be taken without altering the time of his or her next and succeeding home leave entitlements, provided that normally not less than twelve months of qualifying service elapse between the date of the staff member's return from the delayed home leave and the date of his or her next home leave departure.

(i) Subject to the conditions specified in chapter VII of the present Rules, a staff member shall be entitled to claim, in respect of authorized travel on home leave, expenses for himself or herself and eligible family members for the outward and return journeys between the official duty station and the place of home leave. A staff member may also claim travel time in respect of authorized travel on home leave.

(l) (ii) In the case of home leave following the staff member's return from family visit travel under staff rule 7.1 (a) (vii), normally a period of not less than three months of continuous service has elapsed since the staff member's return from family visit travel.

Rule 5.3
Special leave

(f) In exceptional cases, the Secretary-General may, at his or her initiative, place a staff member on special leave with full pay if he or she considers such leave to be in the interest of the Organization;

(g) Continuity of service shall not be considered broken by periods of special leave with or without pay. However, staff members shall not accrue service credits towards sick, annual and home leave, salary increment, seniority, termination indemnity and repatriation grant during periods of special leave with partial pay or without pay exceeding one month. Periods of special leave with partial pay or without pay exceeding one month shall not be counted towards accrued years of service for eligibility requirements for a continuing appointment.

Rule 7.2
Official travel of eligible family members

(c) The United Nations shall not install family members in, or pay their travel expenses to, non-family duty stations.

Rule 7.3
Loss of entitlement to return travel expenses

(a) A staff member holding a fixed-term or continuing appointment who resigns before completing one year of service or within six months following the date of his or her return from travel on home leave or family visit, or within three months for a staff member assigned to designated duty stations, shall not be entitled

to payment of return travel expenses for himself or herself and family members unless the Secretary-General determines that there are compelling reasons for authorizing such payment.

Rule 9.8
Termination indemnity

(f) A staff member selecting the option of special leave described in staff rule 9.8 (d) shall sign an undertaking acknowledging that his or her status on special leave is solely for pension purposes and that his or her entitlements and those in respect of any dependants to all other emoluments and benefits under the Staff Regulations and Staff Rules are determined as final as at the date of commencement of such special leave.

Rule 9.11
Last day for pay purposes

(a) (vii) ...

Completed years of service (as defined in rule 9.8)	*Months of salary*

Months of salary referenced above may be made in a lump sum as soon as the pay accounts and related matters can be closed. Such payment shall be made only to the surviving spouse and dependent children. For staff in the Professional and higher categories, the payment shall be calculated on the basis of the staff member's gross salary less staff assessment according to the schedule of rates set forth in staff regulation 3.3 (b) (i). For staff in the Field Service category, the payment shall be calculated on the basis of the staff member's gross salary less staff assessment according to the schedule of rates set forth in staff regulation 3.3 (b) (i), plus language allowance, if any. For staff in the General Service and related categories, the payment shall be calculated on the basis of the staff member's gross salary, including language allowance, if any, less staff assessment according to the schedule of rates set forth in staff regulation 3.3 (b) (ii) applied to the gross salary alone. All other entitlements and accrual of benefits shall cease as at the date of death, except as provided by staff rule 3.9 (f) for payment of education grant when the staff member dies while in service after the beginning of a school year.